



MEMORANDUM

AGENDA ITEM #IV.E

DATE: SEPTEMBER 25, 2017

TO: COUNCIL MEMBERS

FROM: STAFF

SUBJECT: LEGAL COUNSEL REVIEW AND PROPOSED CONTRACT EXTENSION

Attached for your information is the Independent Contractor Professional Services Employment Contract between Legal Counsel and the South Florida Regional Planning Council. Paragraph 2.0 on page 1 stipulates that this contract shall commence on October 1, 2017 and terminate on September 30, 2018. At the July 24, 2017 Council Meeting, Legal Counsel offered to amend their existing FY 16-17 contract and move from a monthly retainer-based contract with hourly billing for special services to an hourly-based contract for all services beginning as of August 2017. This offer was accepted by the Board.

At the subsequent SFRPC Legal Review Committee meeting with Legal Counsel on August 10, 2017, it was mutually agreed to move to an hourly billing contract for FY 17-18. Legal Counsel assured the Legal Review Committee that they will be able to provide full legal services and support to members and staff under this new arrangement and proposed budget as they have done in the past. In addition, the FY 17-18 budget line for legal services was increased to \$45,000 from the proposed \$40,000, to include an additional \$5,000 in reserve.

As full payment and compensation for Attorneys and for all legal services, the Council shall pay the following rates: Partners - \$225.00 per hour; Associates - \$205.00 per hour; and Paralegals - \$ 125.00 per hour.

Recommendation

Approve the contract

**INDEPENDENT CONTRACTOR PROFESSIONAL
SERVICES EMPLOYMENT CONTRACT**

THIS INDEPENDENT CONTRACTOR PROFESSIONAL SERVICES EMPLOYMENT CONTRACT is made and entered into in duplicate in Broward County, Florida, this ____ day of _____, 2017 by and between the SOUTH FLORIDA REGIONAL PLANNING COUNCIL, a body corporate and politic and an agency of the State of Florida, hereinafter referred to as "SFRPC", being party of the first part, and SAMUEL S. GOREN, as a member of the law firm of Goren, Cherof, Doody & Ezrol, P.A., hereinafter referred to as "ATTORNEY", party of the second part.

IN CONSIDERATION of the mutual covenants and promises herein contained and the mutual exchange of other good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed, promises and covenanted as follows:

1.0 SFRPC does hereby agree to employ and accordingly does employ ATTORNEY, and ATTORNEY does hereby agree to accept and does accordingly accept employment by the SFRPC in the capacity of "General Counsel" of the SOUTH FLORIDA REGIONAL PLANNING COUNCIL, all in accordance with the terms and conditions and provisions of said employment as set forth hereinbelow.

2.0 The term of employment of ATTORNEY under this Contract, hence the term of this Independent Contractor Professional Services Employment Contract, shall commence on October 1, 2017 and terminate on September 30, 2018 the term of employment of ATTORNEY hereunder shall be for a period of twelve (12) months, unless the term of employment of ATTORNEY is earlier reduced or terminated pursuant to the early termination provision as set forth herein in numbered Paragraph 3 hereof.

3.0 This Independent Contractor Professional Services Employment Contract is terminable by either SFRPC or ATTORNEY at any time on thirty (30) days written notice to the other party. However, at ATTORNEY'S option, and if so requested by SFRPC, ATTORNEY may continue to provide the professional services contemplated herein pending the appointment/employment of his successor if such appointment/employment requires more than thirty (30) days, and provided that SFRPC exerts reasonable efforts during said thirty (30) days to seek and select his said successor.

In addition, the parties may terminate this Employment Contract at any time and on any agreed basis by mutual consent of all parties, the same reduced to writing and properly executed by all parties hereto. Likewise, the term of this Agreement may be extended at any time by mutual consent of all parties hereto, the terms of such extension being reduced to writing and executed by all parties hereto.

4.0 ATTORNEY, or a member of the law firm, agrees to personally attend all regular and special meetings of the SFRPC Council and to attend any meeting of any official SFRPC board, committee or commission when specifically requested to attend and to perform any and all legal services, of whatever kind or nature, including office practice and litigation, required, in the opinion

of the Attorney or requested of ATTORNEY by SFRPC for the SOUTH FLORIDA REGIONAL PLANNING COUNCIL and the agents, servants and/or employees thereof (when same are acting in their official capacity(s) on behalf of the SOUTH FLORIDA REGIONAL PLANNING COUNCIL) during the term of this Employment Contract, subject only to the following. All legal services to be performed by ATTORNEY hereunder shall be rendered at the request or direction of the majority of the SFRPC (meaning majority of Council sitting at the time that any vote is taken on a direction to request service from ATTORNEY); otherwise, ATTORNEY shall not be required to perform legal services for SFRPC except on his own initiative and at his own expense. Other legal fees and expenses that may be incurred are as follows:

- 4.1 Any litigation in which the SFRPC is a party plaintiff or a party defendant in either the Broward County Court, the Broward Circuit Court, or the United States District Court for the Southern District of Florida or any other administrative matter, or trial or appellate Court into which the SFRPC is summoned or petitions;
- 4.2 Any administrative hearings before any governmental/administrative bodies;
- 4.3 Co-Counsel activities with insurance counsel assigned by the SFRPC's insurance carrier when necessary and appropriate.
- 4.4 Real estate and related loan transactions.

For purposes of clarification and emphasis: This Independent Contractor Professional Services Employment Contract is, and is intended to be, a party specific agreement and shall be construed accordingly. The individual attorney with whom SFRPC contracts hereby shall be the sole and exclusive party to render services for, to and on behalf of the SFRPC pursuant to the terms hereof. Except with the specific concurrence and approval of the SFRPC Council, no substitution of counsel for ATTORNEY shall be permitted, except as expressly provided for herein.

The parties specifically recognize and understand that the ATTORNEY is a member of the law firm of Goren, Cherof, Doody & Ezrol, P.A., Fort Lauderdale, Broward County, Florida (the "Firm") and that several members of the Firm possess the requisite skill, competence and exposure in administrative/governmental practice. Specifically, therefore, and notwithstanding any of the foregoing, the rendition of services hereunder by an attorney from the Firm other than the specific attorney contracted with hereunder shall not be prohibited and shall be deemed to be in accordance with the provisions of Section 112.313, Florida Statutes, as amended from time to time, including, litigation and support services otherwise described and permitted by the aforesaid Statute.

5.0 As full payment and compensation for ATTORNEYS and for all legal services hereunder, SFRPC shall pay to ATTORNEY and ATTORNEY agrees to accept from SFRPC rates as follows:

Partners	\$225.00/hour
Associates	\$205.00/hour
Paralegals	\$125.00/hour

In the event of early termination pursuant to the terms hereof, ATTORNEY shall be entitled to accrued and unbilled/billed and unpaid compensation as shall have accrued to the date of said early termination.

6.0 In addition to the compensation for professional services as last set forth, ATTORNEY shall be permitted to submit to the SFRPC on a monthly basis for payment by SFRPC to ATTORNEY an invoice for all reasonable and necessary legal expenses incurred on behalf of the SFRPC, such as court costs and filing fees, in addition to long distance toll charges, messenger service, computerized legal research, photo-copying and facsimile costs not performed by the SFRPC. The foregoing constitutes reimbursement of legal expenses to ATTORNEY and not legal fees for services as contemplated hereunder. ATTORNEY may also request these costs be paid directly by SFRPC to the billing party, agency or vendor upon their original invoice or billing statement rather than on a reimbursement basis including reimbursement for library books and supplements owned by the SFRPC and in possession of the Attorney, if any.

7.0 This Independent Contractor Professional Services Employment Contract sets forth the entire agreement between the parties hereto. Any prior conversations or writing are merged herein and extinguished. No subsequent amendment to this Contract shall be binding upon any of the parties hereto unless reduced to writing and properly signed and executed.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Independent Contractor Professional Services Employment Contract to be executed this ____ day of _____, 2017.

WITNESSES AS TO ALL PARTIES:

SOUTH FLORIDA REGIONAL PLANNING
COUNCIL

BY: _____
TIM DAUBERT, CHAIR

BY: _____
DANIELLA LEVINE CAVA, SECRETARY

ATTORNEY

SAMUEL S. GOREN, as a
Member of the Law Firm of
Goren, Cherof, Doody & Ezrol, P.A.

ATTACHMENT "A"
FOR PRIVATE ATTORNEY SERVICES

A. SCOPE OF SERVICE:

*The ATTORNEY, or a member of his law firm, shall attend all regular and special meetings of the SFRPC Council and to attend any meeting of any official SFRPC board, committee or commission when specifically requested to attend and to **perform any and all legal services, of whatever kind or nature, including office practice and litigation,** required or requested of ATTORNEY by SFRPC for the SOUTH FLORIDA REGIONAL PLANNING COUNCIL and the agents, servants and/or employees thereof (when same are acting in their official capacity(s) on behalf of the SOUTH FLORIDA REGIONAL PLANNING COUNCIL) during the term of this Employment Contract, subject only to the following. All legal services to be performed by ATTORNEY hereunder shall be rendered at the request or direction of the majority of the SFRPC (meaning majority of Council sitting at the time that any vote is taken on a direction to request service from ATTORNEY) and/or the Executive Director; otherwise, ATTORNEY shall not be required to perform legal services for SFRPC except on his own initiative and at his own expense.*

For purposes of clarification and emphasis: This Independent Contractor Professional Services Employment Contract is, and is intended to be, a party specific agreement and shall be construed accordingly. The individual attorney with whom SFRPC contracts hereby shall be the sole and exclusive party to render services for, to and on behalf of the SFRPC pursuant to the terms hereof. Except with the specific concurrence and approval of the SFRPC Council, no substitution of counsel for ATTORNEY shall be permitted, except as expressly provided for herein.

The parties specifically recognize and understand that the ATTORNEY is a member of the law firm of, Goren, Cherof, Doody & Ezrol, P.A., Fort Lauderdale, Broward County, Florida (the "Firm") and that several members of the Firm possess the requisite skill, competence and exposure in administrative/governmental practice. Specifically, therefore, and notwithstanding any of the foregoing, the rendition of services hereunder by an attorney from the Firm other than the specific attorney contracted with hereunder shall not be prohibited and shall be deemed to be in accordance with the provisions of Section 112.313, Florida Statutes, as amended including, litigation and support services otherwise described and permitted by the aforesaid Statute.

2. *ATTORNEY shall review and analyze SFRPC files, data, documents and other materials and advise on a recommended legal course. Further, ATTORNEY shall attend and participate in meetings, conference calls, inspections or the like and report on the status of the legal matters.*

3. *ATTORNEY shall prepare and file pleadings, motions, or briefs, initiate and conduct discovery, as required and represent SFRPC in any related litigation and otherwise represent SFRPC at trial or on appeal.*

B. COMPENSATION/FEEES:

1. *SFRPC shall be billed in accordance with Exhibit "1".*
2. *Billable hours for hourly billed activities shall be measured in six (6) minute increments. Compensation of attorney hours will be for actual time spent providing attorney services to the SFRPC.*
3. *Premium rates will not be paid for overtime work.*
4. *Attorney time while traveling is neither billed nor compensable.*

C. COMPENSATION/COSTS:

1. *Reimbursement of costs for third-party vendor bills, including but not limited to, exhibits, transcripts, and witness fees, filing fees and court costs require prior written authorization by SFRPC and shall be reimbursed based upon presentation by ATTORNEY of an appropriate Statement for Costs. The SFRPC shall not pay for firm surcharges added to Third Party Vendor bills.*
2. *Routine expenses such as long distance toll charges, messenger service, photocopying, postage, printed library materials and facsimile costs are compensable by the SFRPC upon presentation by ATTORNEY on its monthly Statements.*
3. *Non-routine office overhead expenses such as long distance phone calls, long distance facsimile transmissions, long distance courier services, bulk mailings, bulk third party copying, blueprints, x-rays, photographs and computer-assisted legal research services must be justified to the AGENCY and shall be reimbursed based on documented third party vendor charges. If these charges exceed subject to annual budget, as amended from time to time, prior written approval from the AGENCY must be obtained. In-house bulk mailings and bulk copying expenses must be supported by usage logs or similar documentation. Firm surcharges are not reimbursable.*
4. *ATTORNEY shall, if applicable, only bill SFRPC for its proportionate share of the cost of legal research, attending hearings or engaging in client representation of any type, which is applicable to other clients.*
5. *Incurred reimbursable costs described herein shall not exceed ONE THOUSAND AND NO/100 (\$1,000.00) DOLLARS per fiscal year. ATTORNEY shall notify SFRPC in writing when costs reach \$1,000.00. Said notification shall be made as soon as it is practicable and prior to the next monthly invoice.*

D. FORMATION FOR INVOICES:

1. Within thirty (30) days of service provision, each statement for fees and costs shall be submitted in original (white) and one (gold) copy, in a format that includes the following information:

- A. Case name and number, if applicable, or other legal matter reference;
- B. Invoice Number for the particular bill;
- C. **DELETED;**
- D. ATTORNEY and SFRPC contract administrators' names;
- E. Inclusive dates of the month covered by the Invoice;
- F. **DELETED;**
- G. **DELETED;**
- H. **DELETED;**
- I. **DELETED;**
- J. Any other information as may be requested by SFRPC'S contract administrator.

E. ADMINISTRATION OF AGREEMENT:

- 1. The SFRPC contract administrator is ISABEL COSIO CARBALLO.
- 2. The ATTORNEY contract administrator is SAMUEL S. GOREN.
- 3. All written approvals must be obtained from the parties' contract administrators or their designees. All notices must be given to the parties' contract administrators.
- 4. This contract shall be governed by and construed under the laws of Florida.

F. OTHER AVAILABLE SERVICES:

Upon receipting approval from SFRPC, the ATTORNEY shall use existing SFRPC agreements, when available and cost effective, to acquire services (e.g., computer-assisted legal research) and the assistance of professionals (e.g., court reporters, expert witnesses) at reduced rates.

G. PUBLIC RECORDS:

All documents prepared pursuant to the Agreement are subject to Florida's Public Records Law, unless specifically so stated. Refusal of the ATTORNEY to allow public access to such records, as required by such law, shall constitute grounds for unilateral cancellation of this AGREEMENT.

H. PUBLIC CONDITIONS:

1. The ATTORNEY will make affirmative efforts to achieve cost effectiveness by consolidating court hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency.

2. *Multiple staffing at meetings, hearings, depositions, trials, etc., by the ATTORNEY will not be compensated without prior written approval from SFRPC.*

3. *ATTORNEY agrees that all documents shall be promptly returned at the termination of the ATTORNEY'S involvement in the case or matter at hand.*

4. *SFRPC in-house staff shall be used in the legal matter to the maximum extent possible.*

5. *The ATTORNEY will provide immediate notice by facsimile transmission or telephone regarding significant case developments, which will likely result in media inquiries.*

6. *The ATTORNEY shall provide SFRPC immediate notice of any representation undertaken by ATTORNEY in matters where the client is suing or being sued by the State or State entities in any civil or adversarial administrative action.*

7. *A contingency fee contract must be commercially reasonable. "Commercially reasonable" means the fees shall be no more than the amount permissible pursuant to Rule 4-1.5 of the rules regulating The Florida Bar and case law interpreting that rule. If the amount of the fee is in dispute, the counsel retained by the state shall participate in mandatory binding arbitration. Payment of all attorney's fees is subject to appropriation. Attorney's fees shall be forfeited if, during the pendency of the case, the counsel retained by the state takes a public position that is adverse to the state's litigation or settlement posture.*

8. *Each private attorney who is under contract to provide attorney services for the state or a state agency shall, from the inception of the contractual relationship until at least 4 years after the contract expires or terminates, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. The private attorney shall make all such records available for inspection and copying upon request in accordance with Chapter 119, Florida Statutes.*

9. *The AGENCY's general counsel must approve and sign the contract as to form and legality. The Contract must be signed by the AGENCY head, who shall also maintain custody of the contract.*

EXHIBIT 1 – FEE SCHEDULE

1. HOURLY BILLING SCHEDULE:

ATTORNEYS and its paralegal staff to be used under this contract include the following individuals at the hourly rates indicated:

<i>SAMUEL S. GOREN</i>	<i>\$225.00/HOUR</i>
<i>JAMES A. CHEROF</i>	<i>\$225.00/HOUR</i>
<i>DONALD J. DOODY</i>	<i>\$225.00/HOUR</i>
<i>KERRY L. EZROL</i>	<i>\$225.00/HOUR</i>
<i>MICHAEL D. CIRULLO</i>	<i>\$225.00/HOUR</i>
<i>JULIE F. KLAHR</i>	<i>\$225.00/HOUR</i>
<i>DAVID N. TOLCES</i>	<i>\$225.00/HOUR</i>
<i>JACOB G. HOROWITZ</i>	<i>\$225.00/HOUR</i>
<i>SHANA H. BRIDGEMAN</i>	<i>\$205.00/HOUR</i>
<i>BRIAN J. SHERMAN</i>	<i>\$205.00/HOUR</i>
<i>TRACEY A. DECARLO</i>	<i>\$205.00/HOUR</i>
<i>FARAH L. NERETTE</i>	<i>\$205.00/HOUR</i>
<i>SHARI C. WALLEN</i>	<i>\$205.00/HOUR</i>
<i>CERTIFIED PARALEGALS</i>	<i>\$125.00/HOUR</i>

The above rates may be adjusted if both parties agree, and shall be documented in writing by amendment to this Agreement.